



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via First Class Mail

Paul Kilgore, Treasurer
Pete for Congress
423 S. Addison Road
Addison, IL 60101

JUN 22 2016

RE: MUR 6970

Dear Mr. Kilgore:

On November 23, 2015, we notified Pete for Congress and you in your official capacity as treasurer (the "Committee") that the Federal Election Commission received a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On June 17, 2016, the Commission determined, on the basis of the information in the complaint and supplemental complaints, and information provided by you, to dismiss the allegations that the Committee violated 52 U.S.C. §§ 30104(b), 30118, and 30125(e); to find no reason to believe that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 101.3 for failure to report testing-the-waters expenditures; and to find no reason to believe that the Committee violated 52 U.S.C. § 30103(a) or 11 C.F.R. § 102.1. Accordingly, on June 17, 2016, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Tanya Senanayake, the attorney assigned to this matter, at (202) 694-1571.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal line extending to the right.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENT: Peter DiCianni MUR 6970
6 DiCianni for DuPage County Board
7 Pete for Congress and Paul Kilgore in his
8 official capacity as treasurer
9

10 **I. INTRODUCTION**

11 This matter arises from allegations that Peter DiCianni, a sitting member of the DuPage
12 Illinois County Board, used impermissible funds from his Illinois local political committee,
13 DiCianni for DuPage County Board ("local committee"), to support his federal candidacy in the
14 Republican primary for U.S. Representative in Illinois's 8th Congressional District; and that
15 DiCianni failed to file a timely declaration of candidacy or required disclosure reports after his
16 local political committee raised more than \$5,000 to support his federal campaign.

17 While Respondents generally deny that any of the local committee's fundraising or
18 disbursements were in connection with DiCianni's federal candidacy, they offer no explanation
19 for a \$500 disbursement by the local committee that appears to have funded a sponsorship of a
20 community picnic on behalf of DiCianni's 2016 federal campaign. Because the local committee
21 accepted funds from prohibited corporate and union sources, this \$500 payment appears to
22 constitute a prohibited contribution to DiCianni's federal committee. The Commission,
23 however, has no information indicating that Respondents raised or spent any other impermissible
24 funds in connection with the federal campaign, or that DiCianni attained candidate status by
25 raising or spending \$5,000 in connection with his federal campaign prior to his declaration of
26 candidacy.

27 Given that the potential violations in this matter appear to be limited to the single \$500
28 payment, the Commission exercises its prosecutorial discretion to dismiss the allegations that

1 DiCianni for DuPage County Board made, and that Peter DiCianni and Pete for Congress
2 accepted and failed to report, a prohibited contribution, and issue a letter of caution. The
3 Commission finds no reason to believe that Peter DiCianni or Pete for Congress failed to
4 disclose funds received or payments made for testing-the-waters purposes. The Commission
5 also finds no reason to believe that Peter DiCianni violated the Act by failing to timely register
6 and report as a candidate, and no reason to believe that Pete for Congress and Paul Kilgore in his
7 official capacity as treasurer violated the Act by failing to timely register as a principal campaign
8 committee.

9 II. FACTUAL BACKGROUND

10 Peter DiCianni is a DuPage County Board Member in DuPage County, Illinois, whose
11 term expires in 2018. DiCianni for DuPage County Board is an Illinois local political committee
12 that supports DiCianni's candidacy for local office.

13 The Complaint alleges that, at DiCianni's request, the Complainant and DiCianni met on
14 June 19, 2015, and that at this meeting DiCianni expressed interest in entering Illinois's 8th
15 Congressional District race, suggested that the Complainant drop out of the race, and said that he
16 had the support of several mayors in the district.¹ DiCianni publicly announced that he was
17 running in the 8th Congressional District race on September 13, 2015.² DiCianni filed with the
18 Commission a Statement of Candidacy and a Statement of Organization designating Pete for
19 Congress as his principal campaign committee on October 7, 2015. Pete for Congress's initial
20 disclosure report, the January 31, 2016 Year End Report, shows that the first receipts and
21 disbursements in connection with DiCianni's federal campaign occurred in October 2015.

¹ Compl. at 1.

² Compl. at 1; Resp. at 1.

1 The Complaint alleges that DiCianni for DuPage County Board received donations from
2 corporations, banks, and at least one union between June 2015, when Complainant asserts he
3 became aware that DiCianni was testing the waters for a federal candidacy, and September 2015,
4 when DiCianni announced his federal candidacy.³ The Complaint alleges that DiCianni was not
5 running for local office during this period and that the funds that the local committee was raising
6 and spending were to support DiCianni's federal candidacy. Complainant alleges that DiCianni
7 donated these impermissible funds to various political groups that now support his congressional
8 candidacy, and that he used these funds for robocalls in support of his federal campaign.⁴

9 In his Response, DiCianni asserts that he uses DiCianni for DuPage County Board to
10 "promote [his] county office and support fellow local officials and local organizations," and that
11 this committee has not provided funds for DiCianni's congressional bid.⁵ DiCianni explains that
12 DiCianni for DuPage County Board received donations from various entities through September
13 2015 after he hosted an annual golf outing for his county seat in June 2015,⁶ that his first
14 fundraiser for the congressional race was scheduled for October 21, 2015, and that he had not
15 raised or spent more than \$5,000 on his federal campaign as of October 14, 2015.⁷

16 In a First Supplemental Complaint, the Complainant alleged that DiCianni began "testing
17 the waters" for a congressional bid on June 19, 2015.⁸ The Complainant also alleged that
18 DiCianni's local committee raised over \$5,000 prior to June 30, 2015 and over \$5,000 during the
19 third quarter.⁹ The Complainant attached as evidence of this fundraising the quarterly reports
20 that DiCianni for DuPage County Board filed with the Illinois State Board of Elections.¹⁰ The
21 Complainant further alleged that DiCianni paid \$500 for a tent at the 35th Annual Northwest

³ Compl. at 2.

⁴ *Id.* at 3.

1 Suburban Republican Family Picnic, the sponsorship webpage of which lists DiCianni's federal
2 campaign logo.¹¹

3 In a Response to the First Supplemental Complaint, DiCianni reiterated that he did not
4 use funds from DiCianni for DuPage County Board for his congressional bid.¹² DiCianni stated
5 that the robocalls mentioned by the Complainant notified the public about an annual run
6 sponsored by a local autism charity, made no mention of DiCianni's candidacy, and occurred
7 prior to DiCianni's declaration of candidacy.¹³ DiCianni also stated that DiCianni for DuPage
8 County Board accepted the corporate, bank, and union donations described in the Complaint for
9 a June golf event hosted by DiCianni.¹⁴ Additionally, DiCianni claimed that, when meeting the
10 Complainant in June 2015, he did not ask the Complainant to leave the race and did not state to
11 the Complainant that he was a candidate but instead expressed to the Complainant that he was
12 "considering running" and "was taking the temperature of local elected officials."¹⁵ The

⁵ Resp. at 1. The Office of the General Counsel ("OGC") did not receive responses from DiCianni for DuPage County Board or from Pete for Congress and Paul Kilgore in his official capacity as treasurer.

⁶ *Id.*

⁷ *Id.*

⁸ First Supp. Compl. at 1.

⁹ *Id.*

¹⁰ *Id.* Attachs. 1 and 3.

¹¹ *Id.* at 2 & Attach. 2.

¹² Resp. to First Supp. Compl. at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

1 Response does not address the allegation that the local committee made a \$500 disbursement for
2 an event which listed DiCianni's federal campaign as a sponsor.

3 In a Second Supplemental Complaint, the Complainant restated his allegations and
4 further alleged that DiCianni fraudulently used his local campaign logo and funds once he had
5 announced his federal candidacy.¹⁶ In a Response to the Second Supplemental Complaint,
6 DiCianni restated his claims from his previous Responses and stated that his first federal
7 fundraiser occurred in October 2015.¹⁷

8 III. LEGAL ANALYSIS

9 A. Prohibited Contributions

10 The Act prohibits any candidate, political committee, or other person from knowingly
11 accepting or receiving contributions from corporations, banks, and labor organizations.¹⁸ A
12 contribution includes any "direct or indirect payment, distribution, loan, advance, deposit, or gift
13 of money, or any services, or anything of value" made in connection with a Federal election.¹⁹
14 The Commission's regulations interpret the term "anything of value" to include all in-kind
15 contributions.²⁰

16 In this matter, the Complaint alleges that DiCianni for DuPage County Board accepted
17 contributions from corporations, banks, and labor organizations — which is permissible under

¹⁶ Second Supp. Compl. at 1.

¹⁷ Resp. to Second Supp. Compl. at 1. The Complainant submitted two additional supplemental complaints on January 12, 2016, and January 14, 2016, neither of which alleged new violations under the Act or named new respondents.

¹⁸ 52 U.S.C. § 30118(a); *see* 11 C.F.R. § 114.2(d).

¹⁹ 52 U.S.C. § 30118(b)(2) (does not include a loan of money by a bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business); *see id.* § 30101(8)(A).

²⁰ 11 C.F.R. § 100.52(d)(1).

1 Illinois state law — and that DiCianni used these funds in support of his federal candidacy in
2 violation of the Act. The Complaint provides two examples of expenditures made by the local
3 committee that are allegedly related to DiCianni's federal campaign and would thus constitute
4 impermissible contributions to DiCianni and Pete for Congress: (1) robocalls,²¹ and (2) a
5 sponsorship of the 35th Annual Northwest Suburban Republican Family Picnic.²² With regard to
6 the first allegation, DiCianni claims that the robocalls related to a walk for an autism charity with
7 which he works, and that the calls did not mention his candidacy.²³ The Commission has no
8 evidence suggesting that these calls in fact related to DiCianni's federal candidacy.

9 Regarding the second allegation, which Respondents have not addressed, it appears that
10 DiCianni for DuPage County Board paid \$500 to the 35th Annual Northwest Suburban
11 Republican Family Picnic, and that the organization advertised on its webpage that DiCianni's
12 federal campaign was a sponsor of the picnic.²⁴ Because the federal campaign is credited as a
13 sponsor of the picnic, it appears to have received a benefit from the disbursement by the local
14 political committee. Accordingly, it appears that the \$500 disbursement would constitute a
15 prohibited contribution if DiCianni for DuPage County Board did not use federally permissible
16 funds for the sponsorship.²⁵

17 Given the relatively *de minimis* amount associated with the potential violations, however,
18 and in furtherance of the Commission's priorities and resources, relative to other matters pending

²¹ Compl. at 3.

²² First Supp. Compl. at 2 & Attach. 2.

²³ Resp. to First Supp. Compl. at 1.

²⁴ The picnic was held on September 13, 2015, on the same day as DiCianni's announcement of his congressional candidacy.

²⁵ A nonfederal committee may make contributions provided that the nonfederal committee is able to demonstrate through a reasonable accounting method that the nonfederal committee had received sufficient federally permissible funds to make the contribution. See 11 C.F.R. § 102.5(b)(1).

1 on the Enforcement docket,²⁶ the Commission exercises its prosecutorial discretion to dismiss
2 the allegations that DiCianni for DuPage County Board violated 52 U.S.C. §§ 30118 and
3 30125(e) by making a prohibited contribution with nonfederal funds and that Peter DiCianni and
4 Pete for Congress and Paul Kilgore, in his official capacity as treasurer, violated 52 U.S.C.
5 §§ 30118 and 30125(e) by accepting a prohibited contribution, and issue a letter of caution to
6 these Respondents regarding the potentially impermissible \$500 in-kind contribution and their
7 potential obligation to refund the contribution amount.

8 B. Reporting Violations

9 a. Failure to Report Campaign Expenditures

10 Under the Act, authorized committees must file reports disclosing, *inter alia*, all
11 disbursements.²⁷ In addition, every person other than a political committee that makes
12 independent expenditures in an aggregate amount that exceeds \$250 during a calendar year must
13 file a statement disclosing them.²⁸

14 In this matter, the Complainant alleged that DiCianni raised, but failed to report, over
15 \$5,000 prior to June 30, 2015, and over \$5,000 during the third quarter of 2015.²⁹ It appears that
16 the Complainant is referring to funds raised by DiCianni for DuPage County Board and, as
17 discussed above, it appears that the only disbursement that DiCianni for DuPage County Board

²⁶ See *Heckler v. Cheney*, 470 U.S. 821 (1985). See also Factual & Legal Analysis at 3, MUR 6809 (Kultala for Congress, *et al.*) (finding that the alleged impermissible contribution of \$1,000 was *de minimis* and warranted dismissal).

²⁷ See 52 U.S.C. § 30104(b)(4)(G) (requiring authorized committees to disclose all other disbursements); see also *id.* § 30104(b)(6)(A), (B)(iii) (requiring political committees to identify persons receiving disbursements generally and those in connection with independent expenditures aggregating in excess of \$200 within the calendar year and describing other specific content requirements).

²⁸ *Id.* § 30104(c).

²⁹ First Supp. Compl. at 1.

1 made in connection with DiCianni's federal candidacy was the \$500 picnic sponsorship. Given
2 the relatively *de minimis* amount associated with this reporting violation, and in furtherance of
3 the Commission's priorities and resources, the Commission exercises its prosecutorial discretion
4 to dismiss the alleged violation of 52 U.S.C. § 30104(b) as to DiCianni for DuPage County
5 Board, Peter DiCianni, and Pete for Congress and Paul Kilgore in his official capacity as
6 treasurer.³⁰

7 b. Failure to Report Testing-the-Waters Expenditures

8 An individual becomes a candidate for federal office when he or she is deemed to have
9 decided to run for office and receives or has received contributions or makes or has made
10 expenditures in excess of \$5,000.³¹ Funds that were raised or spent to "test the waters" apply to
11 the \$5,000 threshold for qualifying as a candidate, and the candidate must register with the
12 Commission.³² After an individual reaches candidate status, all reportable amounts from the
13 beginning of the testing-the-waters period must be disclosed on the first financial disclosure
14 report filed by the candidate's committee, even if the funds were received or expended prior to
15 the current reporting period. The regulations define testing the waters as those activities
16 "conducted to determine whether an individual should become a candidate," and include, but are
17 not limited to, polling, telephone calls, and travel.³³

18 The Complaint and Supplemental Complaints contain only conclusory allegations that
19 DiCianni began "testing the waters" for a congressional bid on June 19, 2015³⁴ based on the

³⁰ See *Heckler v. Cheney*, 470 U.S. 821 (1985).

³¹ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

³² See 11 C.F.R. §§ 100.72(a), 100.131(a); see Factual and Legal Analysis at 3, MUR 6533 (Perry Haney);
Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning).

³⁴ First Supp. Compl. at 1.

1 claim that DiCianni used his local committee to pay for robocalls to test the waters for his federal
2 campaign.³⁵ As discussed above, however, the Commission has no information that credibly
3 suggests that these calls were made for testing-the-waters purposes.³⁶ Accordingly, the
4 Commission finds no reason to believe that DiCianni or Pete for Congress and Paul Kilgore in
5 his official capacity as treasurer failed to disclose funds received or payments made for testing-
6 the-waters purposes in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 101.3.

7 **C. Candidate Status**

8 An individual becomes a candidate for federal office when he or she has decided to run
9 for office and has received contributions or made expenditures in excess of \$5,000.³⁷ Upon
10 becoming a candidate, an individual has fifteen days to file a Statement of Candidacy (FEC Form
11 2), and on that form, designate a political committee that will serve as the candidate's principal
12 campaign committee.³⁸ The principal campaign committee then has ten days to file a Statement
13 of Organization (FEC Form 1).³⁹ The Commission has no available evidence indicating that
14 DiCianni either received contributions or made expenditures exceeding \$5,000 before his official
15 declaration of candidacy in September 2015.

16 Accordingly, the Commission finds no reason to believe that DiCianni violated 52 U.S.C.
17 § 30102(e)(1) or 11 C.F.R. § 101.1(a) for failing to timely register and report as a candidate, or
18 that Pete for Congress and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C.
19 § 30103(a) or 11 C.F.R. § 102.1 for failing to timely register as a principal campaign committee.

³⁵ Compl. at 3.

³⁶ *See supra* at Part III.A.

³⁷ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

³⁸ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

³⁹ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1.

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